IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3587 of 2006
With
CIVIL APPLICATION No. 11005 of 2006
With
CIVIL APPLICATION No. 10465 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UBNITED INDIA INSURANCE CO LTD - Appellant(s)
Versus
REKHABEN HARSHADBHAI PATEL & 3 - Defendant(s)

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Appearance :
MS HINA DESAI for Appellant(s) : 1,
MR MTM HAKIM for Defendant(s) : 1 - 2.
None for Defendant(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 29/09/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Admit. Mr MTM Hakim waives service of notice of admission of the appeal on behalf of respondent-original claimants. With the consent of the learned counsel for the parties, we have taken up the appeal for final disposal.

2. This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award dated 9.5.2005 passed by the Motor Accident Claims Tribunal (Aux.) Baroda in MAC Petition No.1396 of 1992 by which the Tribunal awarded compensation of Rs.9,37,528/- on account of death of Harshadbhai Chimanbhai Patel in the application under Section 166 of the Motor Vehicles Act filed by the widow, minor daughter and father of the deceased.

3. On 9.7.1992, deceased was driving his scooter when a collision took place between the truck insured by the appellant- insurance company and the deceased on the scooter. The deceased suffered serious injuries and ultimately succumbed to the injuries during the course of treatment. The heirs filed the claim petition for compensation of Rs.8,20,000/-. The Tribunal held that the accident was caused by the sole negligence of the truck driver. On the question of quantum of compensation, the Tribunal held that on the date of the accident

the deceased had studied upto last year of electrical engineering and he was serving as a Surveyor in the City Survey Office of the State Government for the last about ten years prior to the date of the accident. On the date of the accident, the salary of the deceased was Rs.2871/-p.m.. It was the case of the claimants in the claim petition that had the deceased not died in the accident, he would have reached salary of Rs.5500/-p.m.. It was also contended that the deceased was cultivating 60 bighas of land and that the average income from the agricultural operations was Rs.32,000/- per annum. It was, therefore, contended that the total income of the deceased on the date of the accident was Rs.5472/-p.m..

At the trial, the claimants led the evidence to show that on the date of trial co-employee witness of the deceased Gandhi Harshadbhai was getting salary of Rs.10,740/-p.m.. On that basis, the Tribunal assessed the potential future income of the deceased at Rs.6800/-p.m.. Deducting 1/3rd amount therefrom as the amount which the deceased would have spent on himself, the dependency benefit was assessed at Rs.4534/-p.m. i.e. Rs.54,408/-p.a.. Considering the age of the deceased as 38 years on the date of the accident, the Tribunal adopted the multiplier as indicated in the Second Schedule to the Act i.e. 16 years and computed the compensation for loss of dependency benefit at Rs.8,70,528/-. The Tribunal awarded certain amounts as conventional amounts under

various heads. The total amount of compensation awarded by the Tribunal is as under:-

Rs.8,70,528/-	for loss of dependency benefit
Rs. 20,000/-	for loss of expectation of life
Rs. 20,000/-	for pain, shock and suffering of the deceased
Rs. 20,000/-	for loss of consortium
Rs. 5,000/-	for medicine and transportation
Rs. 2,000/-	for funeral expenses.
Rs.9,37,528/-	Total

The Tribunal also awarded interest at the rate of 9% p.a. from the date of the claim petition till realization and proportionate costs.

It is against the aforesaid award that the insurance company of the truck is in appeal before us.

4. Ms Hina Desai, learned counsel for the appellant- insurance company made an attempt to assail the finding on the question of negligence.

5. After going through the judgment under appeal and having heard the learned counsel, we do not find any reason to disturb the finding given by the Tribunal after examining the oral and documentary evidence on record.

6. Coming to the question of quantum of compensation, the learned counsel for the appellant insurance company has vehemently submitted that the Tribunal erred in assessing the future income of the deceased at Rs.6800/-p.m. when the actual income of the deceased on the date of the accident was only Rs.2800/-p.m.. It is further submitted that the Tribunal also erred in adopting the multiplier of 16 years when the deceased was aged 38 years and had just about 20 years service left. Lastly, it is submitted that the Tribunal has erred in making excessive awards under the heads of conventional amounts for loss of expectation of life and for pain, shock and suffering to the deceased before his death by awarding the total sum of Rs.40,000/-.

7. On the other hand, Mr MTM Hakim, learned counsel for the respondents (original claimants) has submitted that the assessment of prospective income was on the basis of the income which the deceased would have earned on the date of the trial as proved by the co-employee. The multiplier of 16 years is as per the Second Schedule to the Act and lastly it is submitted that the deceased had survived for about 12 hours before his death and, therefore, the Tribunal was justified in awarding compensation under the separate head of compensation for pain, shock and suffering undergone by the deceased over and above the compensation under the conventional head of loss of expectation of life.

8. Having heard the learned counsel for the parties, we are of the view that in view of the decision of the Apex Court in New India Assurance Co. Ltd. vs. Kala Devi, 1996 ACJ 16 and the decisions of this Court in Gujarat State Road Transport Corporation Ltd. vs. Mer Ranmal Bhima, 1997 (1) GLR 325 and in Saruyaben vs. AML Pathan, 2001 (3) GLR 2029, the Tribunal was justified in taking into consideration the higher income of the deceased which the deceased would have earned on account of pay revisions being granted to the Government employees as per the recommendations of the Pay Commissions. The accident in question took place in the year 1992 and the 5th Pay Commission recommendations were accepted by the Government by enacting the Gujarat Civil Services (Revision of Pay) Rules, 1998. In view of this legal position, the Tribunal was justified in assessing the income of the deceased at Rs.6800/-p.m. for the purpose of computing the compensation for loss of dependency benefit. Deducting 1/3rd amount therefrom as the amount which the deceased would have spent on himself, the dependency benefit worked out Rs.4534/-X 12 months = Rs.54,408/- per annum. In the facts and circumstances of the case, we round off the said figure to Rs.55,000/-.

9. Coming to the question of multiplier, the Tribunal has adopted the multiplier of 16 years in view of the provisions of the Second Schedule to the Act.

10. The learned counsel for the insurance company has vehemently submitted that when the Tribunal has computed compensation for loss of dependency benefit, not by taking the actual income of Rs.2800/-p.m. which the deceased was getting on the date of the accident, but by assessing potential future income of the deceased at almost two-and-a-half times the actual income on the date of the accident, the Tribunal ought not to have adopted the multiplier of 16 years and could not have awarded more than 12 years multiplier.

11. On the other hand, Mr Hakim, learned counsel for the respondent- claimants has submitted that apart from the fact that the multiplier is as per the Second Schedule to the Act, the Apex Court has also held in Supe Dei vs. National Insurance Co. Ltd., 2002 ACJ 1166 that the Second Schedule under Section 163A of the Act can be taken as a guideline while determining the compensation under Section 166 of the Act and that in that case the Apex Court adopted the multiplier of 17 years as per the Second Schedule as in that case the age of the deceased was 32 years.

12. Before examining the rival contentions, it is necessary to look at the facts in Supe Dei vs. National Insurance Co. Ltd. (supra). The Tribunal in that case had awarded compensation of Rs.5,42,000/- by assessing the monthly income of the deceased at Rs.4,000/-p.m. and adopting the multiplier of 15

years. The High Court in appeal, however, excluded the overtime allowance from the monthly income and determined the net income of the deceased at Rs.1515/-p.m. and maintained the multiplier of 15 as applied by the Tribunal. Thus, the total amount of compensation was reduced by the High Court to Rs.3,15,000/- and both the Tribunal as well as the High Court had awarded interest at the rate of 6%p.a.. It was in the background of these facts that the Apex Court accepted the submission made on behalf of the claimant to adopt the multiplier of 17 years and also awarded interest at the rate of 9% per annum. Hence on assessment of monthly income of the deceased at Rs.1515/-p.m., the Apex Court applied the multiplier of 17 years by referring to the multiplier in the Second Schedule to the Act and also awarded interest at the rate of 9% per annum from the date of the claim petition till realization.

13. In the facts of the present case, the actual income of the deceased on the date of the accident was Rs.2800/-p.m., but in view of the intervening pay revision which had taken place during pendency of the trial of the claim petition which remained pending for almost 14 years, the Tribunal assessed the income of the deceased at Rs.6800/-p.m..

14. In view of the above, in our opinion, the interests of justice would be served, by adopting the multiplier of 14 years. Hence, the compensation for loss of dependency benefit would come to

Rs.7,70,000/-. The compensation for loss of consortium is awarded by the Tribunal at Rs.20,000/- and the compensation for loss to the estate for expectation for life is also awarded by the Tribunal at Rs.20,000/-. Since the conventional amount being awarded for the loss of consortium is Rs.10,000/- and the conventional amount being awarded for loss to the estate for expectation of life is also Rs.10,000/-, the total amount payable under the two heads would be Rs.20,000/-. However, Mr Hakim has submitted that separate compensation for pain, shock and suffering undergone by the deceased is justified as the deceased survived for almost 24 hours after the accident. Hence we are of the view that the compensation for loss to the estate for loss of expectation of life, compensation for pain, shock and suffering undergone by the deceased before the accident and the compensation for loss of consortium can be awarded at a sum of Rs.40,000/- as under:-

Rs.15,000/-	Compensation for loss to the estate on account of loss of expectation of life
Rs.15,000/-	Compensation to the widow for loss of consortium
Rs.10,000/-	Compensation for pain, shock and suffering undergone by the deceased

The amount awarded by the Tribunal under the head of medicines and transportation charges at Rs.5,000/- is not disturbed. We further award RS.5,000/- as funeral expenses. Hence, the total amount of compensation will be Rs.8,20,000/- which was the amount claimed by the respondent- claimants in their claim petition.

15. In view of the above discussion, the appeal is partly allowed. The amount of compensation awarded by the Tribunal to the claimants (respondents herein) from the appellant- insurance company and the owner and driver of the truck in question is reduced from Rs.9,37,528/- to Rs.8,20,000/- with proportionate costs and with interest at the rate of 9% per annum from the date of the claim petition till realization.

The amount of compensation, if any, awarded under the provisions of Section 140 of the Act shall be adjusted against the aforesaid amount awarded by this Court.

Since the amounts were deposited by the appellant- insurance company earlier in compliance with the interim order of this Court, the differential amount of Rs.1,17,528/- together with proportionate costs and interest shall be refunded to the appellant- insurance company.

The amount shall be apportioned in the ratio

of 75:25 in favour of the widow and daughter of the deceased (who is aged 20 years) by now respectively.

Out of the amounts to be so apportioned, 90% of the amounts shall be invested in fixed deposits with a nationalized bank near the residence of the claimants for a period of five years with usual conditions about prohibition against premature encashment/ encumbrance etc. of the deposits and with permission to the claimants to withdraw interest periodically accruing on the deposits.

It is clarified that in case the respondent-claimants require any amount in future, it will be open to them to make an application for disbursement by showing their genuine need and in such an eventuality, the Tribunal shall first disburse the amount out of the fixed deposits in the name of the daughter.

16. Since the appeal is disposed of, Civil Application No.11005 of 2006 for stay and Civil Application No.10465 of 2006 for disbursement do not survive and are accordingly disposed of as infructuous.

(M.S. SHAH, J.)

(K.M. MEHTA, J.)

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